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OGC Has Reviewed

MEMORANDUM FOR: Assistant Executive Officer, DD/P

SUBJECT: Destruction of Clandestine Services Correspondence

1. We have received your memorandum of 7 August 1959 on the above subject in which you ask our opinion on the legal definition of the term "records" as used in laws governing the maintenance and disposal of Government documents and request our guidance in the matter of practical administration in this field, in compliance with applicable laws, with respect to operational field correspondence.

2. We would like to say at the outset that we are in general accord with the interpretation of basic legal principles which is expressed in your submission. This problem is largely a practical one and to a great extent reduces itself to the handling of operational correspondence in a manner compatible with broad statutory objectives.

3. The basic legal situation in the area of Federal records management is well set forth in a recent Cabinet Paper (CP 59-53/4, dated 27 July 1959) on the removal of papers of a "personal-official" nature by retiring executives, a problem only indirectly related to the one at hand. We think it appropriate to provide excerpts from the paper at this point:

> 'Government owned documentary material whichdoes not fall within the definition of records may be disposed of under R.S. § 161 (5. U.S.C. 22) which provides in part:
>
> > 'The head of each department is authorized to prescribe regulations, not inconsistent with law, for. . .the custody, use, and preservation of the records, papers and property appertaining to it.'
>
> "This statute, apparently enacted under the authority of the Congress to make rules and regulations respecting the 'Property of the United States' (Constitution, Art. I.Sec. 3, Cl.2), seems to confer adequate authority upon department heads to dispose of records and papers appertaining to a department so long as such disposition is 'not inconsistent with law,' e.g., the Records Disposal Act, Executive Order 10501 or limitations relating to

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confidential information. Accordingly, if material does not fall within the definition of 'records' contained in the Records Disposal Act, as, for example, extra carbons or photostats of memoranda, and is not classified or confidential removal may be authorized under R.S. §161. Although the statute covers only the nine executive departments enumerated in 5 U.S.C. 1, the courts have tended to read parallel powers into the statutes governing the independent agencies.

"The definition of 'records' contained in the Records Disposal Act (44 U.S.C. 366) includes:

> '. . . all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by any agency of the United States Government in pursuance of Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data contained therein. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of the word "records" as used in sections 366-376 and 378-380 of this title.'

"Extra carbon copies and photostats are not records under this definition. Further, the definition confers some discretion on agency heads to determine whether material comes under it, and the legislative history of the act indicates that some discretion was in fact intended. The definition requires that two conditions must be met. First, it must be 'made or received by any agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data contained therein.' Obviously cases may exist in which it is difficult to determine whether any particular document should be treated as a 'record' in the light of these requirements. . . .

"Guidance as to the manner in which discretion is intended to be exercised is supplied by the emphasis placed in the Federal Records Act (44 U.S.C. 392, et seq.) upon the making and preservation of records for the purpose of documenting policies, decisions and

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essential transactions of agencies and in order to protect the legal and financial rights of both the Government and persons affected by agency activities. Material necessary for such purposes is to be treated as 'records' and not be removed.

". . . .

". . . . The discretion conferred upon department and agency heads with respect to the classification of materials as records must place primary emphasis upon the importance of maintaining in the hands of the Government documentation of Government activity. However, if this purpose is effectuated, leeway remains for the treatment of papers as. . .non-record and, therefore, subject to being removed under R.S. 161 if otherwise proper.

". . . ."

4. Turning to the practical problem of Clandestine Services operational field correspondence we find, after considerable search, no other type of communication in the Government which is analogous to this and, therefore, no previous statement of working principles which we can consider applicable, but taking the precepts expressed in the Cabinet Paper, together with those in various statements by the General Services Administration, and applying them to the facts of operational field correspondence, we come to the following view, which we trust will be adequate guidance for those who must administer records in the field of clandestine operations.

5. First of all, we consider 'record," as used in the statutes, to apply only to documents containing data not recorded elsewhere, and therefore, there is not to be included in this definition more than one copy (or original) of a document or any document considered vital because it contains certain data, which data is incorporated or summarized elsewhere. Stated another way, a document which is considered "record" because it contains a given piece of data ceases to be "record" whenever that piece of data is incorporated into some other document.

6. Secondly, we think that operational field correspondence, as distinguished from administrative correspondence (and, for other reasons, callou), is by and large to be considered non-record. For example, a project in final form as it goes forward for approval, would certainly be considered record. Yet it would appear that field correspondence transmitting data in support of, or bearing on, the formulation of the project, would not be "record" material since the vital information contained therein is set forth and consequently preserved in the basic project document. Because of the nature of this approval process, and them by which projects are carried out

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and reported upon, the great majority of operational field correspondence consists either of data which is incorporated into summary reports or else the detailed recountings of day-to-day activities which, were it not for the distance involved, would in many instances not even be reduced to writing. At the very least, it would appear that the great bulk of this working level correspondence does not embody information which need be preserved for the purpose of documenting policies, decisions, and essential transactions.

7. Examples of types of operational field correspondence which we consider exceptions to the generalization stated in paragraph 6 (but not that in paragraph 5) above are those items which contain:

(a) Information relating to controlled individuals (ranging from informants to staff employees) with respect to status, health, job performance, function, etc.;

(b) Information which may be useful as evidence of oral or written contracts, commitments, or other obligations, whether with respect to individuals or organizations;

(c) Information on occurrences in connection with which there may be a future claim by or against the Government;

(d) Information on the dissolution of projects, especially as may bear on holdover ties with individuals or organizations or the management of vestigial project affairs;

(e) Information on occurrences either of general historical significance or of lasting interest with regard to the development of the tradecraft or lore of the Clandestine Services.

8. Of course, the above list is not to be considered exclusive. Persons accustomed to dealing with operational data will recognize others. In this particular field, what is "record" will in the long run, for practical reasons, pretty much have to be what these persons consider vital and so identify. But a piece of data which is considered vital need only be preserved in one accessible document in order to comply with the law. The extent to which documents which are "non-record" under the above principles should be retained is not a legal consideration and therefore not within the province of this Office or, as we understand it, within the scope of your inquiry. We would, of course be be happy to give our views on specific managerial problems, and in any event, to be of any further help on the legal aspects you may desire.

[redacted]

25X1A

Office of General Counsel

cc: Chief, Record Management Staff

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Distribution Sheet Attached to Memorandum for Assistant Executive Officer, DD/P, Re: Destruction of Clandestine Services Correspondence, Dated 14 October, 1959

Distribution:
Orig. - Addressee
1 - [redacted]
1 - Subject file (Records)
1 - Signer file
1 - Chrono file

25X1A

25X1A OGC/[redacted] (14 October 1959)

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:
AEXO/DDP
2119 Curie Hall
25X1A [redacted]

NO.

DATE
7 August 1959

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. Mr. L. R. Houston, GC 221 East Bldg.	10 Aug	10 Aug		
2. 25X1A [redacted]				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

25X1A

Larry:

I'm dropping this into the hopper and running. I shall call you on my return from leave at the end of the month; I'd like very much to discuss this issue with you directly. 25X1A

[redacted]

FORM 1 DEC 56 610 USE PREVIOUS EDITIONS ☑ SECRET ☐ CONFIDENTIAL ☐ INTERNAL USE ONLY ☐ UNCLASSIFIED
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7 August 1959

MEMORANDUM FOR: General Counsel

SUBJECT: Destruction of CS Correspondence

1. In the fall of 1957 the Clandestine Services Records Committee, through the Records Policy Officer appointed by the DD/P, took drastic steps to rid the CS of valueless accumulations of paper. The authority of individuals in this process, background required in evaluating paper, and the procedures to be used, were published. These matters are covered
25X1A in [redacted] attached.

2. The CS Records Committee, at a recent meeting, requested that our rules, standards and procedures be reviewed by your office for consistency with legal provisions covering the disposal of records.

3. The Clandestine Services has two reasons to preserve selected documentation, normally in distinct contexts and collections:

a. To fulfill the mission of the CS;

b. To comply with Federal law governing the preservation of essential records.

4. Items which need to be retrievable to fulfill the mission of the
25X1A CS are described in [redacted] Positive selection by competent personnel determines which items are to be retained. Original copies of field correspondence constitutes the great bulk of this collection. These original copies are called "Record copies," which causes confusion. As we read the law, virtually none of this material is covered by the legal definition of the term "Records" (Records Disposal Act of July 7, 1943). The word "operations" causes similar semantic trouble. Clearly the definition of this word as used in pertinent Federal legislation, and as used in the CS, is not the same.

5. In addition, a small quantity of papers document the work of the CS in the sense of the legal definition of "Records," in that they need to be "preserved ... as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government ..." Materials under this heading normally consist of papers written at headquarters, for the record, summarizing operational activity, seeking approval for it, budgeting for it, establishing T/Os, contracting for services of individuals, etc.

25X1A 6. [redacted] deals solely with field correspondence (and information

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received from other agencies of the Government for which we have no records responsibility in the legal sense) pertaining to the CS mission.

7. In support of this distinction between materials, we cite the pamphlet "Disposition of Federal Records" issued by the General Services Administration as National Archives Publication No. 50-3, 1949. It states inter alia: "The bulk of the records of most agencies are not those that record its general management, the determination of its policies or its internal administration, but rather those that record the specific individual transactions that make up its actual operations. These records not only have the greatest bulk, but also present the most serious problems of evaluation. Normally most of the significant evidence relative to the operations of an agency is relayed upwards through reports of a statistical or narrative nature, through correspondence and memoranda and other summary records. It would seem, therefore, that the records of individual transactions are seldom basically essential as evidence of policy, organization, function or procedure."

8. Disposition of CS materials which do come under the legal definition of the term "Records" is handled in compliance with Federal law, except that the discretionary powers conferred upon the Director of CIA in Public Law 253 and elsewhere clearly apply to them. We wish to draw your attention to the fact that there is no question of destroying materials of this type in violation of the intent of Federal law. The issue which has required clarification, and which the Records Committee is asking you to review, is that of the proper application of the legal term "Records" to the bulk of our field correspondence.

9. As Secretary of the Records Committee I am available to members of your office for consultation on this subject. Your advice will be appreciated.

25X1A

[redacted]

Asst. Executive Officer, DD/P

4 Attachments:

25X1A

1 - [redacted]
2 -
3 -
4 -

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